Civil Misc. App. No.57/2004
Bholaram Saini & Ors.
Versus Sonhanlal Saini &Ors.

Date of Order ::: 20/07/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. Rajeev Sogarwal, for appellants (Claimants)
Mr. T.P.Sharma for respondent (insurer)
Mr. Ankur Mathur, for Mr. Pankaj Gupta for respondent.

Instant appeal has been filed for enhancement of compensation of Rs.1.65 lacs awarded by Motor Accident Claims Tribunal, Bankikui (Dausa) vide Award dt.01/10/03 in MAC No.07/02.

Claimants are husband and seven children who all were major at the time of accident, of deceased Smt. Kesar aged 50 years, who died in a motor accident on 04/11/01. As alleged in claim petition, deceased was earning Rs.3,000/- per month by assisting in cultivation work at agricultural fields of her husband and selling milk. But after taking note of material available on record, Tribunal recorded finding that deceased was having annual income as notionally provided under Schedule appended to Motor Vehicle Act and after 1/3rd deduction, assessed Rs.10,000/- per year as dependency to the claimants and after applying multiplier of 11, awarded total compensation of Rs.1.65 lacs (including Rs.10,000/- as consortium to husband, Rs.5,000/- each to her children and Rs.10,000/- as funeral expenses). Hence this appeal.

Counsel for appellants submits that deceased was assisting whole family and was earning Rs.3,000/-, against which no contrary evidence has come on record yet learned Tribunal on arbitrary

basis proceeded in determining her income as Rs.15,000/- per year, which was on much lower side and requires enhancement.

Counsel for respondents supported finding recorded by learned Tribunal and submits that all seven children of deceased were major and could not be said to be dependent upon her and in such circumstances, no error has been committed by Tribunal in proceeding to determine notional income as per Schedule appended to the Act while determining just compensation and what has been finally awarded by learned Tribunal does not require interference.

I have considered contentions of Counsel for parties and with their assistance, examined material on record. This fact remained undisputed that her seven children (claimants herein) were major; as such it cannot be said that they were dependent upon her. In instant case, there was no material on record to prove her earning as alleged in claim petition. In my opinion, no error was committed by learned Tribunal in determining her income notionally as per Schedule appended to the Act and what has been finally awarded to claimants under impugned Award being just, does not require interference by this Court.

Consequently, this appeal fails and is hereby dismissed.

(Ajay Rastogi), J.

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